

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. DISTRICT COURT
EAST, DIST. MICH.
DETROIT

JUL 7 3 39 PM '00

FILED

RALPH G SACHS,

Plaintiff,

v

UNITED STATES OF AMERICA,
acting through the INTERNAL
REVENUE SERVICE, and
QUICK and REILLY, INC , a
New York corporation,

Defendants.

Civil Action

Case No

00-73070

Hon JUDGE ROBERT H. CLELAND
MAGISTRATE JUDGE PEPE

JURY TRIAL DEMANDED

COMPLAINT AND JURY DEMAND

Plaintiff, RALPH G SACHS, by and through counsel, Abraham & Rose, P L C , hereby
brings this action and alleges as follows

1 This is an action arising under the internal revenue laws of the United States for
the recovery of monies wrongfully collected from Plaintiff.

2 (a) As to Defendant United States of America, jurisdiction is conferred upon
this Court by 28 U S C. § 1346(a)(1) and by 26 U S C § 7433(a)

(b) As to Defendant Quick & Reilly, Inc , jurisdiction is conferred upon this
Court by 28 U S C. § 1332(a) by virtue of diversity of citizenship among the parties with an
amount in controversy exceeding \$75,000 00

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3 Plaintiff, RALPH G SACHS, is a citizen of the United States and resides in the
State of Michigan

4 Defendants are the UNITED STATES of AMERICA and QUICK & REILLY,
INC , a corporation headquartered and incorporated in the State of New York

FEDERAL TAX COLLECTION HISTORY

5. The tax liability at the root of this action has accrued from the tax years ended
December 31, 1978 and December 31, 1979.

6 On or about December 29, 1998, after approximately eight (8) years of
Defendant United States of America's ("IRS") inactivity on this matter, this case was assigned to
Revenue Officer Jacqueline Zogut ("Zogut") for field collection activities

7 According to IRS's Automated Lien System ("ALS"), a total of four
Notices of Federal Tax Lien ("NFTL") had been filed against Plaintiff, but as of September 26,
1997, all four NFTLs had either expired or had self-released pursuant to 26 U S C § 6325(a)
(See attached, Exhibit A)

8 The Collection Statute Expiration Date ("CSED") until which IRS could
collect the underlying tax liability in this matter was July 4, 1999 (See attached, Exhibit B)

9 As Zogut indicated in her history notes, the filing of a new NFTL would interfere with collection efforts during this relatively short time frame and "would now give [taxpayer] due process rights" which could impede her collection actions

10 At all times during the unauthorized collection activities alleged in the Complaint, a valid NFTL was never filed

11. On June 1, 1999, a Notice of Levy (Form 668-A) was mailed to the New York headquarters of Defendant Quick & Reilly, Inc. ("Q&R")

12 Q&R is Plaintiff's brokerage firm which housed his investment securities which were the ultimate target of IRS's unauthorized collection activity .

13 Q&R received the Notice of Levy on June 11, 1999, and would have twenty-one days from the date of receipt of the Notice to forward the funds which were attached Plaintiff's account at Q&R was immediately frozen pending the outcome of the levy Because of the holiday weekend, this twenty-one day period would expire on July 6, 1999, two days after the CSED

14. During this twenty-one day period, Q&R and IRS were informed as to Revenue Ruling 75-355, 1975-2 C B 478, that seizure of negotiable instruments is valid only through their actual physical seizure as opposed to any coerced liquidation

15 Zogut responded by faxing a summons (Form 2039) to Mr Edwin Mendez, Q&R's Assistant Director of Compliance, requesting "information as to the negotiable instruments you are holding in trust for Ralph Sachs." The summons was faxed on June 21, 1999, and demanded a response by 4.00 PM on June 22, 1999

16 On or about July 1, 1999, Plaintiff was informed by Q&R that despite his protest Q&R would respond to the Notice of Levy by liquidating the securities constructively seized by IRS and consequently frozen in Plaintiff's account

17. Plaintiff was given the choice of choosing the securities to liquidate or allowing Q&R to choose for him In either event, Plaintiff was notified by IRS as well as by Q&R's counsel, Mr Joel Davidson, Esq , that after the upcoming holiday Zogut could collect a check in the amount of the levy from Q&R's local branch office (See attached, Exhibit C)

18 On or about July 1, 1999, as no funds would be collected until after the CSED, Defendant United States of America initiated a federal action against Plaintiff under 28 U S C § 7402 to reduce the outstanding tax assessment to a judgment This action was ultimately dismissed by the United States on September 17, 1999

19 On or about July 13, 1999, a check in full satisfaction of the levy was seized by IRS from Plaintiff's account at Q&R's local office (See attached, Exhibits D, E, and F)

20 Plaintiff's negotiable instruments were never physically seized, the negotiable instruments were never properly constructively seized, and Plaintiff himself was never provided with a Notice of Seizure (Form 2433)

21 On September 23, 1999, Plaintiff's counsel filed a Form 843, Claim for Refund, and addressed the same issues raised in this Complaint (See attached, Exhibit G)

22 In a letter dated February 9, 2000, IRS rejected Plaintiff's claim and thereby exhausted administrative remedies as mandated by 28 U S C § 7433(d)(1)

CLAIMS OF UNAUTHORIZED COLLECTION ACTION
AGAINST DEFENDANT UNITED STATES OF AMERICA

23. Plaintiff hereby incorporates by reference paragraphs 1-22 of this Complaint

24 26 U S C. § 7433(a) prohibits reckless, intentional, or even negligent collection activities which violate the internal revenue laws

25 (a) For violation of the above provision, IRS is liable to Plaintiff for the sum of its actual damages plus costs of this action

(b) Defendant's unauthorized collection actions included the following;

(i) The "levy" and "seizure" effectuated at the branch office of Q&R unequivocally violated the terms of Revenue Ruling 75-355 as well as Internal Revenue Manual

§ 5 11.6 8(3) which explicitly require the physical seizure of the actual negotiable instruments. As early as June 21, 1999, Zogut's history notes indicate her knowledge of the need for "seizure of the actual instruments" (emphasis added), and a June 25 memo from Christine Kalcevic, acting Chief Advisory, IRS Special Procedures to the Chief of Collection Division further reiterates Defendant's knowledge that negotiable instruments "must be in possession of the IRS before they can be liquidated" (See attached, Exhibit H)

(ii) The constructive seizure and forced liquidation as evidenced by attached Exhibit B violates the Constitutional protections afforded by GM Leasing Corp v United States, 429 U S 338 (1977), which requires a writ of entry to effectuate a valid seizure. This violation gives rise to a cause of action under Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U S. 388 (1971)

(iii) The continued collection actions without the support of duly filed NFTL violates Internal Revenue Manual § 56(12)9(1) which provides that "A notice of federal tax lien must be filed in the proper jurisdiction before seizure." Even an unwritten statutory lien cannot exist when a once filed lien has been released. 26 U.S.C. § 6325(f)(2) provides for the proper procedure for the revocation of a lien release, and Zogut chose not to file a new lien in order that new appeal rights would not be created.

(iv) The service of the summons to Mr. Mendez was improper in two respects. First, nowhere in the Internal Revenue Code is such service allowed by fax, and 26

U.S C. § 7603 allows such service only by hand or by registered or certified mail. Second, the one day turnaround time demanded by Zogut from the Assistant Director of Compliance of a national brokerage firm is patently unreasonable on its face and violates the terms 26 U S C § 7605.

(v) While Plaintiff's counsel was provided with the requisite Notice of Seizure (Form 2433), Plaintiff himself was never provided the notice as required by 26 U S C. § 6335(a). This contributed to IRS's overall ability to wrongfully acquire and maintain control of Plaintiff's assets.

(vi) Zogut's history notes clearly confirm that no funds were collected on this matter until well after the CSED. By IRS's own admissions, the liquidation of the negotiable instruments without their actual seizure was contrary to law. Without their timely seizure within the statute, any improperly levied funds received after the CSED must be returned pursuant to 26 U S C § 6343(d)(2).

CLAIMS OF BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANT QUICK & REILLY, INC

26 Plaintiff hereby incorporates by reference paragraphs 1-25 of this Complaint.

27. As an institution which housed and brokered Plaintiff's negotiable instruments, Q&R had a fiduciary duty to Plaintiff, its then client.

28 From June 11, 1999 until mid-July 1999, Plaintiff's attorneys were in virtual daily contact with either Mr Mendez, Mr Davidson, or other Q&R agents in its local offices

29 During this time frame, not only did Q&R and Mr. Davidson refuse to simply review the less than two-paragraph Revenue Ruling which explicitly establishes the inability of a mere levy without physical seizure to attach to negotiable instruments, but Mr Davidson boldly asserted that Q&R has "no legal or moral obligation" to assist Plaintiff who had significant investments through Q&R. (See attached, Exhibit I)

30 At all times during this chronology, Q&R's first loyalty was to IRS, and despite explicit Treasury Regulations clearly on point, only after receiving permission from Zogut did Mr. Davidson agree that the twenty-one day period would conclude as of July 6

31 By ignoring the primary fiduciary duty to its client, Plaintiff, Q&R directly facilitated the unauthorized collection activities at issue in this matter.

WHEREFORE, Plaintiff prays that this Court grant the following relief

1. Enter a judgment that Defendant United States of America acting through the Internal Revenue Service did recklessly or intentionally violate Plaintiff's rights by its unauthorized collection activities, and Defendant Quick & Reilly, Inc. breached its fiduciary duty to Plaintiff by refusing to acknowledge the proper law surrounding federal tax collections,

2 Enter a judgment for Plaintiff in the amount of \$251,511.09, the amount of funds wrongfully collected from Plaintiff as a direct and proximate result of these wrongful collection activities and clear breach of fiduciary obligations, as well as appropriate interest accruing from the date of the original constructive seizure of Plaintiff's account,

3 Enter a judgment for the costs of this suit, including reasonable attorney fees herein incurred, and

4 Enter a judgment for punitive damages as well as for such other relief as the Court deems proper

Respectfully submitted
ABRAHAM & ROSE, P.L.C.

Dated

7-6-2000

By

Jerry R. Abraham

JERRY R. ABRAHAM (P45768)
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Tel (248) 539-5040

JURY DEMAND

Plaintiff, RALPH G. SACHS, by and through counsel, Abraham & Rose, P.L.C. hereby demands trial by jury.

Dated

7-6-2000

By

Jerry R. Abraham
JERRY R. ABRAHAM (P45768)
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED